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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

GOOGLE INC., a Delaware corporation, Plaintiff, v. AFFINITY ENGINES, INC., a Delaware corporation, Defendant.	Case No. C 05-0598 JW (HRL) **DECLARATION OF RORY G. BENS IN SUPPORT OF AFFINITY ENGINES, INC.'S MOTION TO DISMISS AND/OR STAY PROCEEDINGS** Date: May 9, 2005 Time: 9:00 a.m. Judge: Hon. James Ware

I, Rory G. Bens, declare as follows:

1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe, counsel of record for defendant Affinity Engines, Inc. ("AEI"). I am a member of the State Bar of California. I make this declaration in support of AEI's Motion to Dismiss and/or Stay Proceedings. I have personal knowledge of the facts set forth in this declaration and could and would competently testify thereto if called as a witness.

2. On May 25, 2004, AEI filed a lawsuit against Google Inc. ("Google") in Santa Clara Superior Court. The lawsuit is entitled *Affinity Engines, Inc. v. Google, Inc. et al.*, Case No. 104 CV 020368, and is currently pending before Judge William F. Elfving in Santa Clara County Superior Court. A true and correct copy of the Complaint in the state court matter (without exhibits) is attached hereto as **Exhibit A**.

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3. Extensive written discovery has taken place in the state court action. Several rounds of document requests and interrogatories have been served by the parties. AEI and Google have noticed or are scheduling approximately ten depositions that will likely occur between March and April 2005. The Superior Court has heard and ruled on five discovery-related motions filed by the parties. The parties completed court-ordered mediation in November 2004, but the case did not settle. A Trial Setting Conference is scheduled before the Superior Court on April 26, 2005. AEI expects trial in the state court case to occur by August 2005.

4. Attached hereto as **Exhibit B** is a true and correct copy of Defendants' Response to Affinity Engines, Inc.'s Second Set of Special Interrogatories, dated October 4, 2004, in which Google responded to various interrogatories propounded by AEI in the pending state court action.

5. Attached hereto as **Exhibit C** is a true and correct copy of AEI's Responses to Google, Inc.'s First Set of Interrogatories, dated July 6, 2004, in which AEI responded to various interrogatories propounded by Google in the state court action.

6. Attached hereto as **Exhibit D** is a true and correct copy of Google's purported registration for inCircle, dated January 21, 2005. AEI obtained this document from the records of the United States Copyright Office.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 1, 2005 in Menlo Park, California.

/s/ Rory G. Bens /s/
Rory G. Bens

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